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BON APPÉTIT DANISH, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT COURT OF CALIFORNIA

WESTERN DIVISION

BON APPÉTIT DANISH, INC. a California Corporation, Plaintiff, v. LE PETIT BELGE LLC a Massachusetts Limited Liability Company Defendant. ______________________________	)))))))))))))	Civil Action No: COMPLAINT FOR: (1) VIOLATION OF SECTION 32 OF THE LANHAM ACT (2) VIOLATION OF SECTION 43(a) OF THE LANHAM ACT (3) VIOLATION OF SECTION 17200 OF CALIFORNIA BUSINESS AND PROFESSIONS CODE **DEMAND FOR JURY TRIAL**

Bon Appétit Danish, Inc. ("Bon Appétit"), brings this action for trademark infringement, unfair competition, and deceptive business practices against Le Petit Belge LLC ("Le Petit Belge") and states as follows:

NATURE OF ACTION

1. Bon Appétit asserts both Federal and State causes of action based on Le Petit Belge's infringement of Bon Appétit's trademarks as follows: (1) infringement of registered trademarks in violation of the Lanham Act, 15 U.S.C. § 1114; (2) unfair competition in violation of the Lanham Act, 15 U.S.C. §1125(a)(1)(A); and (3) infringement and unfair competition in violation of Section 17200 of the California Business and Professions Code.

2. Bon Appétit brings this action due to Le Petit Belge's unauthorized use of Bon Appétit's registered trademarks BON APPETIT and BUON APPETITO in connection with the sale of baked products. Le Petit Belge's infringing use of the BON APPETIT and BUON APPETITO trademarks is likely to cause confusion, harming the public and damaging Bon Appétit's valuable rights.

JURISDICTION

3. This Court has original jurisdiction over Counts One and Two under 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331 because they arise under the laws of the United States, namely the Lanham Act, 15 U.S.C. § 1051 *et seq.*, which is an Act of Congress relating to trademarks and unfair competition. This Court has supplemental jurisdiction over Count Three under 28 U.S.C. § 1367(a) because it is so related to the claims within the Court's original jurisdiction that it forms a part of the same case of controversy under Article III of the United States Constitution.

4. This Court also has original jurisdiction over the entirety of this action under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different states.

PARTIES

5. Plaintiff Bon Appétit is a California corporation with its principal place of business at 4525 District Blvd, Vernon, California 90058.

6. On information and belief, Defendant Le Petit Belge, LLC is a Massachusetts limited liability company with a principal place of business at 1311 East 34th Street Brooklyn New York 11210.

BON APPÉTIT'S PRIOR RIGHTS

7. In the mid-1980's, Bon Appétit first began selling fresh pastries delivered in baskets to retailers in the Los Angeles, California area.

8. Bon Appétit's pastries soon achieved a following among individuals in Los Angeles which allowed the business to expand and grow quickly.

9. Capitalizing on its early success, Bon Appétit began selling danishes, cakes and muffin pastries for "on the go" consumers under the BON APPETIT mark in 1990.

10. Since its humble start, Bon Appétit has become the premier "on the go" baker in North America. Currently, Bon Appétit sells its branded BON APPETIT and BUON APPETITO (collectively "BON APPETIT Marks") products in thousands of retail locations throughout the United States.

11. To protect and give further notice of its rights, Bon Appétit owns a federal trademark registration for BON APPETIT, Reg. No. 1,826,501 for "danish, cakes and muffin pastries," with the mark's date of first use and first use in commerce on August 1, 1990. This registration issued on March 15, 1994. A copy of the Registration certificate for this mark is attached as Exhibit A. The BON APPETIT registration is valid and subsisting, and in accordance with §1057(b) of the Lanham Act, is *prima facie* evidence of Bon Appétit's ownership of the mark, the validity of the mark, and its exclusive right to use the mark in connection with

the above identified goods. Further, the BON APPETIT mark has been held incontestable in accordance with 15 U.S.C. § 1065 of the Lanham Act, which constitutes conclusive evidence of the validity of the BON APPETIT mark and registration and Bon Appétit's exclusive right to use the registered mark in commerce.

12. Bon Appétit also owns a federal trademark registration for BUON APPETITO, Reg. No. 1,960,572 for "bakery goods" with the mark's date of first use and first use in commerce on November 12, 1994. This registration issued on March 5, 1996. A copy of the Registration certificate for this mark is attached as Exhibit B. The BUON APPETITO mark has been held incontestable in accordance with 15 U.S.C. § 1065 of the Lanham Act, which constitutes conclusive evidence of the validity of the BUON APPETITO mark and registration and Bon Appétit's exclusive right to use the registered mark in commerce.

13. Bon Appétit has sold millions of dollars of goods using its BON APPETIT Marks and has spent millions of dollars to promote and distribute its goods bearing the marks throughout the United States.

14. Bon Appétit sells goods using its BON APPETIT Marks in convenience stores throughout the United States.

15. By virtue of its use for approximately three decades and substantial investment, Bon Appétit owns valuable trademark rights in its BON APPETIT Marks.

16. As a result of Bon Appétit's long use, advertising and promotion, its BON APPETIT Marks are strongly associated with Bon Appétit and represent an extremely valuable goodwill owned by Bon Appétit throughout the United States.

LE PETIT BELGE'S KNOWLEDGE OF BON APPETIT AND INFRINGEMENT OF THE BON APPETIT MARKS

17. The owners of Le Petit Belge know of Bon Appétit**.**

18. Le Petit Belge and Bon Appétit had discussions about entering into distribution agreements between the two companies.

19. Le Petit Belge and Bon Appétit have both exhibited at recent NACS Shows.

20. Le Petit Belge is aware that Bon Appétit distributes its ready-to-eat products primarily through convenience stores.

21. Convenience stores in the United States generally have less than 3000 square feet of retail space.

22. Given the small amount of retail space in convenience stores products are more closely shelved than in regular grocery stores or big box stores.

23. The small amount of retail space in convenience stores has resulted in situations where Le Petit Belge and Bon Appétit products are shelved within feet of each other.

24. Recently, Le Petit Belge began selling a product called Stroopwafel which uses both the BON APPETIT and BUON APPETITO marks on its packaging as shown below:

BELGIANBOYS.COM
Try dipping your waffles in fresh milk!
BON APPÉTIT! 食飯
¡BUEN PROVECHO!
BUON APPETITO! SMAKELIJK
#COOKIETROUBLE
Facts

BELGIANBOYS.COM
Cover your warm beverage to get that melted caramel effect!
BON APPÉTIT! 食飯
¡BUEN PROVECHO!
BUON APPETITO! SMAKELIJK
#COOKIETROUBLE
on Facts

and

Dipped in real Belgian Chocolate!
WWW.BELGIANBOYS.COM
±60 AUTHENTIC DUTCH MINI CARAMEL WAFFLES
Dipped in real Belgian Chocolate!
DIP YOUR WAFFLES IN MILK
#BELGIANBOYS
BELGIAN BOYS
THE TROUBLEMAKERS OF TASTE!
Nutrition Facts
TASTE OF Holland AUTHENTIC
BON APPÉTIT! ¡BUEN PROVECHO! BUON APPETITO! SMAKELIJK
Questions or comments visit us on the web at:
www.belgianboys.com
Produced exclusively for Belgian Boys · Farmingdale, NY
Best BEFORE:
10-24-17
LIEGE WAFELS
CARAMELICIOUS
POWERSNACK
BITE-SIZE
AUTHENTIC
IRRESISTIBLE
DUTCH
DELICIOUS
CRUNCHY OUTSIDE & CHEWY INSIDE
AMAZING
YUM

25. A Stroopwafel is a caramel cookie waffle which has been baked.

26. The Le Petit Belge Stroopwafel product, whose packaging features Bon Appétit's BON APPETIT and BUON APPETITO trademarks, are sold in the same retail outlets.

27. The Le Petit Belge Stroopwafel product, whose packaging features Bon Appétit's BON APPETIT and BUON APPETITO trademarks, and Bon Appétit products are sold in close physical proximity to each other.

28. Le Petit Belge acts are without Bon Appétit's authorization or approval.

29. Le Petit Belge acts are greatly and irreparably damaging to Bon Appétit and will continue to damage Bon Appétit, and the public, unless and until enjoined by this Court; wherefore, Bon Appétit is without adequate remedy at law.

FIRST CLAIM
TRADEMARK INFRINGEMENT

30. Bon Appétit re-alleges the preceding paragraphs 1-29 inclusive as if fully set forth herein.

31. Bon Appétit's U.S. Registration No. 1,826,501 is valid, enforceable, and in full force and effect.

32. Bon Appétit's U.S. Registration No. 1,960,572 is valid, enforceable, and in full force and effect.

33. Le Petit Belge's use in commerce of the BON APPETIT and BUON APPETITO in connection with its product is likely to cause confusion or mistake, or to deceive as to source, affiliation, or sponsorship, in violation of the Lanham Act, 15 U.S.C. § 1114.

34. Bon Appétit has been, and will continue to be, damaged by Le Petit Belge's infringement in an amount to be determined at trial.

35. On information and belief, Le Petit Belge's conduct is willful, deliberate, intentional, and in bad faith, making this an exceptional case.

36. By reason of the foregoing acts, Le Petit Belge has caused, and unless permanently enjoined will continue to cause, irreparable harm to Bon Appétit and to the public. Bon Appétit has no adequate remedy at law.

SECOND CLAIM

FEDERAL UNFAIR COMPETITION

37. Bon Appétit re-alleges the preceding paragraphs 1 – 29 inclusive as if fully set forth herein.

38. Bon Appétit has common law rights in its BON APPETIT Marks, which are uniquely associated with Bon Appétit as the source of goods offered in connection therewith.

39. Le Petit Belge's foregoing use in commerce of the BON APPETIT trademark is likely to cause confusion or mistake, or to deceive as to source, affiliation, or sponsorship, in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

40. Bon Appétit has been and will continue to be damaged by Le Petit Belge's infringement, in an amount to be determined at trial.

41. On information and belief, Le Petit Belge's conduct is willful, deliberate, intentional, and in bad faith, making this an exceptional case.

42. By reason of the foregoing acts, Le Petit Belge's use has caused and will continue to cause irreparable harm to Bon Appétit, and to the public, unless and until enjoined. Bon Appétit has no adequate remedy at law.

THIRD CLAIM

CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200

43. Bon Appétit re-alleges the preceding paragraphs 1-29 inclusive as if fully set forth herein.

44. The foregoing acts of infringement and unfair competition violate Section 17200 of the California Business and Professions Code.

45. Bon Appétit is entitled to an injunction against further infringement and unfair competition.

46. Bon Appétit is entitled to restitutionary relief according to proof.

PRAYER FOR RELIEF

WHEREFORE, Bon Appétit respectfully asks this Court to:

A. Enter judgment that Le Petit Belge has violated the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)(1)(A), the California Business and Professions Code Section 17200;

B. Preliminarily and permanently enjoin Le Petit Belge, its officers, directors, agents, employees, attorneys, successors, and assigns, and all other in active concert or participation with any of them, from directly or indirectly engaging in any further trademark infringement, unfair competition, or deceptive business practices;

C. Order Le Petit Belge to pay:

i. All monetary gain and advantages obtained by Le Petit Belge from its unlawful conduct;

ii. All monetary damages sustained and to be sustained by Bon Appétit as a consequence of Le Petit Belge's unlawful conduct; including lost monetary gains, in an amount to be determined at trial;

iii. Exemplary damages;

iv. Bon Appétit's costs and disbursements in this action, including its reasonable attorneys' fees; and

D. Award Bon Appétit such out and further relief as this Court deems necessary and just.

Respectfully submitted,

Colin T. J. O'Brien
John L. Ambrogi
PARTRIDGE PARTNERS P.C.

Paul D. Supnik

Dated: May 17, 2017

By: /s/ ____________________
Paul D. Supnik
Attorneys for Plaintiff
BON APPÉTIT DANISH, INC.

DEMAND FOR JURY TRIAL

Pursuant to FED. R. CIV. P. 38(b), Bon Appétit respectfully demands a trial by jury of all issues triable by a jury.

Respectfully submitted,

Colin T. J. O'Brien
John L. Ambrogi
PARTRIDGE PARTNERS P.C.

Paul D. Supnik

Dated: May 17, 2017

By: /s/ ____________________
Paul D. Supnik
Attorneys for Plaintiff
BON APPÉTIT DANISH, INC.

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,826,501

United States Patent and Trademark Office

Registered Mar. 15, 1994

TRADEMARK
PRINCIPAL REGISTER

BON APPETIT

BON APPETIT DANISH CO., INC. (CALIFORNIA CORPORATION)
830 SONORA AVENUE
GLENDALE, CA 91201

FOR: DANISH, CAKES AND MUFFIN PASTRIES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-0-1985; IN COMMERCE 8-0-1990.

THE ENGLISH TRANSLATION OF "BON APPETIT" IN THE MARK IS "GOOD APPETITE".

SER. NO. 74-094,620, FILED 9-7-1990.

PATRICIA MALESARDI, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,960,572
Registered Mar. 5, 1996

United States Patent and Trademark Office

TRADEMARK
PRINCIPAL REGISTER

BUON APPETITO

BON APPETIT DANISH CO., INC. (CALIFORNIA CORPORATION)
830 SONORA AVENUE
GLENDALE, CA 91201

FOR: BAKERY GOODS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 11-12-1994; IN COMMERCE 11-12-1994.

THE ENGLISH TRANSLATION OF "BUON APPETITO" IN THE MARK IS "GOOD APPETITE".

SN 74-094,615, FILED 9-7-1990.

PATRICIA EVANKO, EXAMINING ATTORNEY